

# **EXHIBIT C**

Hon. Judge Patrick Oishi  
Hearing Date: June 28, 2016  
Without Oral Argument

SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

MARK HOFFMAN, on his own behalf and  
on behalf of other similarly situated persons,

Plaintiff,

v.

ONE TECHNOLOGIES, LP;

Defendant.

NO. 15-2-23550-8 SEA

**PLAINTIFF'S MOTION FOR LEAVE TO  
FILE AMENDED COMPLAINT**

**I. RELIEF REQUESTED**

Plaintiff Mark Hoffman respectfully asks for leave to file his first Proposed Amended Complaint (attached as *Exhibit 1*) to state his claims more clearly and to make additional factual allegations, including allegations of related claims which accrued after the filing of the original complaint.

**II. STATEMENT OF FACTS**

This is a class action brought on behalf of Washington residents who were sent deceptive emails and directed to websites that made deceptive solicitations, requests, and inducements in violation of Washington's Commercial Electronic Mail Act ("CEMA"), RCW 19.190.010, *et seq.*, and Consumer Protection Act ("CPA"), RCW 19.86.010, *et seq.* See Complaint; and see Proposed Amended Complaint (attached as *Exhibit 1*). Since the filing of his original complaint, PLAINTIFF'S MOTION FOR LEAVE TO AMEND

1 Plaintiff has ascertained additional information that enable him to state his claims more clearly  
2 and make additional allegations in support of those claims. *See id.*

3 On May 31, 2016, Plaintiff's counsel served a draft of the attached Proposed Amended  
4 Complaint upon Defendant's counsel and asked if Defendant would consent to its filing. *See*  
5 Declaration of Albert H. Kirby. Defendant's counsel asked for time for Defendant to consider  
6 how they will respond to the request. *See id.* However, as of the filing of this motion, Defendant  
7 has neither consented nor objected. *See id.*

### 8 **III. STATEMENT OF ISSUES**

9 The issue raised by this motion is whether it is reasonable and just for the Court to grant  
10 Plaintiff leave to file an amended complaint which is attached to the motion as *Exhibit 1*.

### 11 **IV. EVIDENCE RELIED UPON**

12 This motion is based on the files and records on file in this case and the accompanying  
13 declaration of Albert H. Kirby.

### 14 **V. AUTHORITY**

15 CR 15(a) states that "...a party may amend its pleading only by leave of court or by the  
16 written consent of the adverse party; and leave shall be freely give leave when justice so  
17 requires." "The purposes of Rule 15 are to 'facilitate a proper decision on the merits' and to  
18 provide each party with adequate notice of the basis of the claims or defenses asserted against  
19 him." *Herron v. Tribune Pub. Co.*, 108 Wn. 2d 162, 165 (1987) (citations omitted). Accordingly,  
20 "[l]eave to amend should be freely given 'except where prejudice to the opposing party would  
21 result.'" *Id.* (citation omitted).

22 Here, there is no prejudice to the Defendant. The trial date in the matter is not for a year,  
23 and the amended case schedule permits Defendant plenty of time to conduct discovery. Given  
24 the absence of prejudice to Defendant, Plaintiff respectfully asks that the Court grant him leave  
25 to file his Amended Complaint.

1 RESPECTFULLY SUBMITTED: June 20, 2016

2 /s/ Albert H. Kirby

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Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington that today I have served or will serve the foregoing document and its attachments, if any, by e-mail to the following persons:

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Dated: June 20, 2016

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EXHIBIT 1

SUPERIOR COURT OF WASHINGTON  
FOR KING COUNTY

MARK HOFFMAN, on his own behalf and  
on behalf of other similarly situated persons,

Plaintiff,

v.

ONE TECHNOLOGIES, LP,

Defendant.

**CLASS ACTION**

**[PROPOSED] AMENDED COMPLAINT**

Plaintiff MARK HOFFMAN (“Plaintiff” or “HOFFMAN”) brings this class action on his own behalf and on behalf of other similarly situated persons. This class action complaint is filed against Defendant ONE TECHNOLOGIES, LP (“ONE TECHNOLOGIES”).

**I. NATURE OF THE ACTION**

1. This is a class action brought on behalf of Washington residents who were sent deceptive emails and directed to websites that made deceptive solicitations, requests, and inducements in violation of Washington’s Commercial Electronic Mail Act (“CEMA”), RCW 19.190.010, *et seq.*, and Consumer Protection Act (“CPA”), RCW 19.86.010, *et seq.*

**II. THE PARTIES**

2. Plaintiff is an individual and consumer who resides and works in Washington.

3. Plaintiff brings this action in his individual capacity and on behalf of a class of persons similarly situated.

1           4.       ONE TECHNOLOGIES is a company which markets and provides credit  
2 monitoring services to consumers throughout Washington.

3           5.       ONE TECHNOLOGIES is also known as One Technologies, LLC or is an alter  
4 ego of One Technologies, LLC.

5                                   **III. JURISDICTION AND VENUE**

6           6.       ONE TECHNOLOGIES regularly transacts business in King County,  
7 Washington.

8           7.       The wrongful acts referenced in this complaint occurred, were initiated, were  
9 furthered, were given assistance in, or were directed to persons in King County, Washington.

10                                  **IV. GENERAL ALLEGATIONS**

11           8.       HOFFMAN and class members have received similarly deceptive and misleading  
12 emails from ONE TECHNOLOGIES or its agents and/or have been directed to deceptive or  
13 misleading websites with solicitations, requests or inducements that violate the CEMA and CPA.

14           9.       Within four years from the filing of the original complaint in this matter,  
15 HOFFMAN has received numerous emails with false or misleading information in their subject  
16 lines from ONE TECHNOLOGIES or its agents and/or was deceptively solicited, requested, or  
17 induced by ONE TECHNOLOGIES or its agents to provide personally identifying information  
18 by means of web pages, electronic mail messages or other use of the internet in violation of  
19 CEMA and the CPA.

20           10.      In a number of the emails sent to HOFFMAN and class members, the subject  
21 lines contained false, misleading, or otherwise deceptive information.

22           11.      Some of deceptive subject lines were the following:

- 23                   a.   “Experian CyberAlert Examine your score today at no charge -7093501”;  
24                   b.   “Data Breach: Check Your Equifax Score for Errors, Free\*Today”;  
25                   c.   “Due to DataHacks Check Your TranUnion Score for Errors, Free\*Check 4-20-  
26                       15”;



- d. "2nd Notice: Check Out Your 3 Bureau Ranking for Irregularities, by Monday, April 13, 2015. Deadline"; and
- e. "Your Monthly Notification Experian Score is Now Viewable".

12. In order to solicit, request, or otherwise induce HOFFMAN and class members to provide personally identifying information, many emails sent by ONE TECHNOLOGIES or its agents had deceptive email addresses identifying the sender such as the following

- a. "TransUnion DataLeak Warning <TransUnion-DataLeak-Warning@value10.cozyrecordscore.us>";
- b. "Equifax Cyber Warning <equifax.cyber.warning@blw222.interiorscore.ninja>"; and
- c. "Your\_Experian\_Report <your-experian-report@blink70.freecreditscoreshall.ninja>"; and
- d. Your Score Check <YourScoreCheck@dorcasmix.com>.

13. The email addresses identifying the emails' sender were not valid email addresses which could receive a reply email.

14. Many emails contained deceptive messages with embedded links to websites such as the following:

- a. "[Due to DataHacks, Check Your TransUnion Score for Errors](#) Free\*Check 4-20-15" with an embedded link to <http://knowmore.scorelocated.us/>;
- b. "Equifax CyberCrime Warning- Complimentary Score Check ends 04.23.15 [Go Here to View Your Score](#)" with an embedded link to <http://inquire.anlgs.ninja/>; and
- c. "Experian CyberAlert: Examine your score today at no charge [Go here to See Your Score](#)" with an embedded link to <http://choose.ladof.ninja/>.

15. All emails solicited, requested, or otherwise induced recipients to visit websites of ONE TECHNOLOGIES or its agents.

1           16. ONE TECHNOLOGIES or its agents employed automated email creation and  
2 transmission programs which introduced slight variations among the subject lines, sender  
3 addresses, and contents of each email in order to defeat email spam filters.

4           17. ONE TECHNOLOGIES or its agents kept each website linked in an email active  
5 for only a brief period after transmitting the email. This helped ONE TECHNOLOGIES and its  
6 agents to obscure the origins of the emails sent to recipients of the emails.

7           18. When HOFFMAN or a class member visited linked websites that were active,  
8 they would be re-directed to websites which were owned and operated by  
9 ONE TECHNOLOGIES and/or its agents.

10           19. At these websites, ONE TECHNOLOGIES and/or its agents deceptively  
11 attempted to induce HOFFMAN and class members to believe incorrectly that the contents of the  
12 website and the emails which directed them to the websites were provided with authority or  
13 approval of TransUnion, Experian, and Equifax.

14           20. With these emails and websites, ONE TECHNOLOGIES engaged in a scheme  
15 which attempted to induce, request, and solicit HOFFMAN and other class members to provide  
16 personal identifying information through credit monitoring service subscriptions by deceptively  
17 representing that HOFFMAN and other class members would be doing business with  
18 TransUnion, Experian, Equifax, or their authorized representatives or else that they were  
19 receiving important notifications or inducements from TransUnion, Experian, and Equifax  
20 encouraging or directing them to do business with ONE TECHNOLOGIES or its agents.

21           21. ONE TECHNOLOGIES actually or ostensibly authorized or directed its agents to  
22 engage in the conduct attributed to agents in this complete. Alternatively, or additionally, ONE  
23 TECHNOLOGIES ratified such conduct. For example, ONE TECHNOLOGIES paid its agents a  
24 sum of money or other consideration for each person who provided personal identifying  
25 information and subscribed to credit monitoring services at the deceptive websites owned or  
26 operated by ONE TECHNOLOGIES or its agents. Alternatively, if the persons referenced in this  
27 complaint as agents of ONE TECHNOLOGIES are not its agents, then they are its alter egos.

1           22.     The deceptive business practices and conduct of ONE TECHNOLOGIES and its  
2 agents referenced in this complaint injured HOFFMAN and class members in their trade and  
3 property.

4           23.     ONE TECHNOLOGIES or its agents knowingly and willfully violated the CPA  
5 and CEMA in ways that have injured and damaged HOFFMAN and other class members. The  
6 injuries and damages incurred by HOFFMAN are typical of injuries and damages incurred by  
7 other class members. Such injuries and damages include, but are not limited to, the following:

- 8           a.     Emails received by Plaintiff injured the quiet use and enjoyment of his email  
9                 server;
- 10          b.     Emails received by Plaintiff injured his quiet use and enjoyment of the computer  
11                 he uses for his trade;
- 12          c.     Emails received by Plaintiff injured his quiet use and enjoyment of his backup  
13                 storage devices;
- 14          d.     Emails received by Plaintiff usurped some of the limited storage space on his  
15                 email server;
- 16          e.     Emails received by Plaintiff usurped some of the limited storage space on the  
17                 computer he uses for his trade;
- 18          f.     Emails received by Plaintiff usurped some of the limited storage space on his  
19                 backup storage devices;
- 20          g.     Emails received by Plaintiff caused him to lose time from his trade and  
21                 compensable work;
- 22          h.     Emails received by Plaintiff caused him to visit web pages where his personally  
23                 identifying information was solicited by Defendant or its agents who seemed to  
24                 represent themselves, directly or by implication, to be other persons (e.g.,  
25                 TransUnion, Experian, and Equifax) without the authority or approval of such  
26                 other persons;

- i. The web pages to which the received emails directed Plaintiff injured his quiet use and enjoyment of the computer he uses for his trade;
- j. The web pages to which the received emails directed Plaintiff usurped some of the limited storage space on the computer he uses for his trade;
- k. Emails received by Plaintiff were annoying and annoyed Plaintiff;
- l. Emails received by Plaintiff were aggravating and aggravated Plaintiff;
- m. Emails received by Plaintiff worried him and caused him anxiety about his credit;
- n. Email received by Plaintiff invaded his privacy;
- o. The web pages to which the received emails directed Plaintiff injured his trade and property;
- p. Emails received by Plaintiff caused him to accrue a right to recover damages provided statute (*e.g.*, RCW 19.190.010, *et seq.*) that Defendant refuses to pay; and
- q. The web pages to which the received emails directed Plaintiff caused him to accrue a right to recover damages provided statute (*e.g.*, RCW 19.190.010, *et seq.*) that Defendant refuses to pay.

24. The emails received by Plaintiff and other class members and the web pages to which these emails directed them injured them in their trade and property.

25. These violations continue and will continue unless ONE TECHNOLOGIES and its agents are compelled to cease and desist said illegal and deceptive business practices and conduct. For example, Plaintiff received emails that are a subject of this complaint after Defendant was served with a summons for this action and appeared in this action.

## V. CLASS ACTION ALLEGATIONS

26. Plaintiff brings this class action pursuant to Civil Rule 23 on behalf of himself and as a representative of the following class of persons (the "Class"):

Washington residents who received emails from ONE TECHNOLOGIES or its agents that encouraged, induced, solicited, requested, or otherwise directed recipients to visit a

web page owned or operated by ONE TECHNOLOGIES or its agents and that web page prominently displayed a logo for TransUnion, Experian, or Equifax.

27. The Class excludes all attorneys of record and any judges who preside in any hearing in this action.

28. The claims of the Class satisfy all of the requirements for class certification pursuant to Civil Rule 23 including numerosity, commonality, typicality, adequacy of representation, manageability, and superiority.

29. The Class includes numerous Washington residents. Joinder of the numerous members of the Class is impracticable. In fact, given the number of Class members, the only way to deliver substantial justice to all Class members is by means of a single class action.

30. There are questions of fact and law common to all Class members. These common questions predominate over any questions affecting only individual members. The questions of law and fact common to the class arising from the conduct of ONE TECHNOLOGIES include, without limitation, the following:

- a. Is there a cause of action under the CPA arising from emails sent in violation of CEMA or else web pages to which emails induced or solicited recipients to visit?
- b. Is there a cause of action under CEMA arising from emails sent in violation of CEMA or else web pages to which emails induced or solicited recipients to visit?
- c. Do the business practices and conduct of ONE TECHNOLOGIES that are the subject of this complaint otherwise violate the CPA or CEMA?
- d. Did ONE TECHNOLOGIES or its agents negligently, knowingly, or willfully violate Washington law with its business practices and conduct?
- e. Is ONE TECHNOLOGIES liable for the business practices and conduct of its agents that violate the CPA or CEMA?
- f. Is the Class entitled to injunctive relief to prevent ONE TECHNOLOGIES from continuing with its unlawful behavior?

31. The questions referenced above, and other questions like them, predominate over any questions affecting only individual persons, and a class action is superior with respect to

1 considerations of consistency, economy, efficiency, fairness and equity, to other available  
2 methods for the fair and efficient adjudication of claims of all Class members.

3 32. Plaintiff's claims are typical of those of the other Class members.

4 33. A class action is the appropriate method for the fair and efficient adjudication of  
5 this controversy. ONE TECHNOLOGIES has acted in a general manner as part of a systemic  
6 process to the injury and damage of the Class. ONE TECHNOLOGIES or its agents continue  
7 this same conduct which puts other Class members at undue risk of injury in the future. The  
8 prosecution of separate actions by individual Class members could create a risk of inconsistent  
9 and varying adjudications, establish incompatible standards of conduct for ONE  
10 TECHNOLOGIES, or substantially impair or impede the ability of Class members to protect  
11 their interests. ONE TECHNOLOGIES has acted in a manner that applies generally to the class  
12 so that final injunctive or corresponding declaratory relief is appropriate. Alternatively the  
13 questions of law and fact common to class members predominate over any questions affecting  
14 only individual members and a class action is superior to other available methods for fairly and  
15 efficiently adjudicating this controversy.

16 34. Plaintiff is an adequate representative of the Class because he is a member of the  
17 Class and his interests do not conflict with the interests of the Class whose interests will be fairly  
18 and adequately protected by Plaintiff. Also, Plaintiff is represented by counsel with significant  
19 experience representing clients in complex class action litigation.

20 35. Maintenance of this action as a class action is a fair and efficient method for the  
21 adjudication of this controversy. It would be impractical and undesirable for each of the  
22 numerous persons who comprise the Class to bring separate actions. The maintenance of such  
23 separate actions would place a substantial and unnecessary burden on the courts and could result  
24 in inconsistent adjudications, while a single class action can determine, with judicial economy,  
25 the rights of all Class members.

**VI. REQUESTS FOR RELIEF**

Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff and the Class and against ONE TECHNOLOGIES and provide relief as follows:

- A. Certify the Class, appoint Plaintiff's counsel as counsel for the Class, and appoint Plaintiff as the representative of the Class;
- B. Declare that the wrongful business practices and conduct referenced in this complaint are illegal;
- C. Declare that ONE TECHNOLOGIES is responsible and liable for all of the illegal business practices and conduct referenced in this complaint;
- D. Grant extraordinary, equitable, and injunctive relief of sufficient particularity to ensure that ONE TECHNOLOGIES will cease its illegal practices and conduct as it affects and might affect all consumers in Washington;
- E. Award Plaintiff and the Class all damages which are recoverable by Washington law;
- F. Treble said damages as provided by Washington law;
- G. Award Plaintiff and Plaintiff's counsel reimbursement for the expenses they incur in connection with this action, including reasonable attorney fees, expert witness fees, and other costs as provided by law or equity; and
- H. Grant all other and further relief as the Court deems just and proper under law or equity.

1 RESPECTFULLY SUBMITTED: \_\_\_\_\_, 2016

2 /s/

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